

FILED

FEB 21 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FELIPE CRUZ RANGEL; ESTHER
SANCHEZ-CHAVEZ,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-70775

Agency Nos. A75-317-950
A75-317-951

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER and Bybee, Circuit Judges.

Felipe Cruz Rangel and his wife, Esther Sanchez-Chavez, natives and
citizens of Mexico, petition for review of an order of the Board of Immigration
Appeals (“BIA”) denying their motion to reopen based on ineffective assistance of

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

counsel. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252.

We review the denial of a motion to reopen for abuse of discretion, *see Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the petitioners' contention that the BIA should have exercised its sua sponte power to reopen their case. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

The BIA did not abuse its discretion when it denied the petitioners' motion to reopen as untimely where they filed the motion to reopen more than one year after the BIA's final order of removal and did not show they were entitled to equitable tolling. *See Iturribarria*, 321 F.3d at 897 (equitable tolling applies "when a petitioner is prevented from filing because of deception, fraud or error, as long as the petitioner acts with due diligence in discovering" the misconduct).

PETITION FOR REVIEW DISMISSED in part; DENIED in part